

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
18 EDC 03019

<p>■ together with his parent ■ Petitioner,</p> <p>v.</p> <p>Charlotte-Mecklenburg Schools Board of Education Respondent.</p>	<p>FINAL DECISION ORDER GRANTING PARTIAL SUMMARY JUDGMENT ON PETITIONER'S SECOND COUNT</p>
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THIS MATTER COMES on for consideration of Respondent's Motion for Partial Summary Judgment. Petitioner has filed a Response. Oral argument was held via teleconference on October 19, 2018. Careful consideration was given to the Parties' arguments and legal authorities referenced.

CONCLUSIONS OF LAW

1. The IDEA provides that a party "shall request an impartial due process hearing within 2 years of the date the [party] knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows." 20 U.S.C. § 1415(f)(3)(C).
2. The North Carolina General Statutes provide that, "[n]otwithstanding any other law, the party shall file a petition under subsection (a) of this section that includes the information required under IDEA and that sets forth an alleged violation that occurred not more than one year before the party knew or reasonably should have known about the alleged action that forms the basis of the petition." N.C. Gen. Stat. § 115C-109.6(b).
3. Both the IDEA and North Carolina statutes provide two exceptions where the statute of limitations do not apply: "if the parent was prevented from requesting the hearing due to (1) specific misrepresentations by the LEA that it had resolved the problem forming the basis of the petition, or (2) the LEA's withholding of information from the parent that was required under State or federal law to be provided to the parent." N.C. Gen. Stat. § 115C-109.6(c). *See also* 20 U.S.C. § 1415(f)(3)(C), (D); 34 C.F.R. § 300.511(e), (f).
4. For the misrepresentations exception, Petitioners "must show that the school intentionally misled them or knowingly deceived them regarding their child's progress." *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 246 (3d Cir. 2012). For the withholding exception, "only the failure to supply statutorily mandated disclosures can toll the statute of limitations. In other words, plaintiffs can satisfy this exception only by showing that the school failed to provide them with a written notice,

explanation, or form specifically required by the IDEA statutes and regulations.” *Id.* In addition, a petitioner “must also show that the misrepresentations or withholding caused her failure to request a hearing or file a complaint on time.” *Id.* (emphasis in original).

DECISION

It appearing to the Undersigned that there is no genuine issue as to any material fact; and the Respondent is entitled to Summary Judgment as a matter of law concerning all claims prior to May 17, 2017 raised in Petitioner’s Second Count of the Petition.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Respondent’s Motion for Partial Summary Judgment is granted in favor of Respondent concerning all claims prior to May 17, 2017 raised in Petitioner’s **Second Count** of the Petition. This decision is made under the authority of §G.S. 150B-34(e).

FURTHER, the Parties agreed that oral argument on the other issues raised in Respondent’s Motion for Partial Summary Judgment would be held on November 1, 2018.

NOTICE OF APPEAL RIGHTS

In accordance with the Individuals with Disabilities Education Act and North Carolina’s Education of Children with Disabilities laws, the parties have appeal rights regarding this dismissal. Under North Carolina’s Education of Children with Disabilities laws (N.C.G.S. §§ 115C-106.1 *et seq.*) and particularly N.C.G.S. § 115C-109.9, “any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may **appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board** under G.S. 115C-107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section.”

Inquiries regarding the State Board’s designee, further notices and/or additional time lines should be directed to the Exceptional Children Division of the North Carolina Department of Public Instruction, Raleigh, North Carolina prior to the required close of the appeal filing period.

IT IS SO ORDERED this the 22nd day of October, 2018.



Selina Malherbe
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 22nd day of October, 2018.



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